

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ED OWENS,

Plaintiff,

v.

BOEHRINGER INGELHEIM
PHARMACEUTICALS, INC.,

Defendants.

Case No. CIV-21-1157-J

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Boehringer Ingelheim Pharmaceuticals, Inc. ("Removing Defendant"), hereby gives notice of removal of this action, *Ed Owens v. Boehringer Ingelheim Pharmaceuticals, Inc.*, Case No. CJ-2020-302, from the District Court of Comanche County, State of Oklahoma, to the United States District Court for the Western District of Oklahoma. Plaintiff Ed Owens's ("Plaintiff") Petition in the District Court of Comanche County is attached as Exhibit 1. As grounds for removal, the Removing Defendant states as follows:

STATEMENT OF GROUNDS FOR REMOVAL

1. On July 27, 2020, Plaintiff Ed Owens filed this Petition in the District Court of Comanche County, State of Oklahoma. In his Petition, Plaintiff asserts various claims against Removing Defendant related to his alleged use of the prescription drug, Jardiance®. Plaintiff alleges that this prescription drug was defective and caused him serious injury, including Fournier's gangrene and scrotal cellulitis.

2. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a), because (1) there is complete diversity between Plaintiff and Defendant; (2) the amount in controversy exceeds \$75,000; and (3) all other requirements for removal have been satisfied.

3. There is complete diversity of citizenship here because Plaintiff is a citizen of Oklahoma, and Removing Defendant is a citizen of Delaware and Connecticut.

4. Plaintiff Ed Owens is, and at the time of the commencement of this suit was, a resident of Comanche County, Oklahoma. Compl. ¶ 1.

5. Removing Defendant Boehringer Ingelheim Pharmaceuticals, Inc. is, and at the time of the filing of this action was, a corporation organized under the laws of Delaware with its principal place of business in Ridgefield, Connecticut. Removing Defendant is, therefore, a citizen of Delaware and Connecticut.

6. Because Plaintiff is a citizen of Oklahoma and Removing Defendant is a citizen of Delaware and Connecticut, complete diversity exists between Plaintiff and Defendant. *See* 28 U.S.C. §§ 1332, 1441.

7. Plaintiff's claims satisfy the amount-in-controversy requirement set forth in 28 U.S.C. § 1332(a).

8. Plaintiff requests general (non-economic) and special (economic) damages in a sum *in excess* of \$75,000, medical and incidental expenses, punitive damages *in excess* of \$75,000, attorney's fees, and additional compensatory and consequential damages. Compl. at 9. Although Removing Defendant denies any liability or that Removing Defendant is responsible in any way for Plaintiff's alleged damages, it is thus clear, based

upon Plaintiff's characterization of the alleged damages at issue, that the amount in controversy exceeds \$75,000, exclusive of interest and costs.

9. Venue is proper in this Court pursuant because the District Court of Comanche County, State of Oklahoma, where the Petition was filed, is a state court within the Western District of Oklahoma. See 28 U.S.C. §§ 116(c), 1391, 1441(a), and 1446(a),

10. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).¹ The action is being removed within thirty (30) days of Plaintiff's purported service of the Petition on November 18, 2021.²

11. There are no other Defendants from whom consent for removal is required per 28 U.S.C. § 1446(b)(2)(A).

12. Removing Defendant is providing Plaintiff with written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d).

¹ Although this action is removed more than one year from filing, removal is proper because the failure to timely serve evidences bad faith. Specifically, when this matter was initially filed, Plaintiff had summons issued but refused to serve Removing Defendant. Plaintiff had summons re-issued more than one year after the filing, on November 9, 2021, and only then located Removing Defendant and served it. Removing Defendant was not put on notice as to this lawsuit until it was served on November 18, 2021. *See* 28 U.S.C. § 1446(c) ("A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, *unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.*" (emphasis added)); *see also Ritchey v. Upjohn*, 139 F.3d 1313, 1316-18 (1998) (pre-"bad faith" amendment to 28 U.S.C. § 1446(c), but finding that removal was appropriate even after one year had passed from the date of the commencement of the suit because of finding that statute allowed for removal by Defendant once served).

² The action was improperly served via certified mail. Removing Defendant reserves the right to challenge the propriety of service.

13. Pursuant to 28 U.S.C. § 1446(d), Removing Defendant is filing a copy of this Notice of Removal with the clerk of court in the District Court of Comanche County, State of Oklahoma.

14. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, orders and other papers served or filed in the state court action, in addition to the Petition, are attached hereto as Exhibits 2-5. Pursuant to LCvR 81.2(a), a copy of the state court docket sheet is attached hereto as Exhibit 6.

CONCLUSION

WHEREFORE, Removing Defendant gives notice that the matter bearing Case No. CJ-2020-302, pending in the District Court of Comanche County, State of Oklahoma, is removed to the United States District Court for the Western District of Oklahoma, and request that this Court retain jurisdiction for all further proceedings in this matter.

Dated: December 8, 2021

Respectfully submitted,

/s/ Lyndon W. Whitmire

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Attorneys for Defendant

Boehringer Ingelheim Pharmaceuticals, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December 2021, I electronically transmitted the attached document with the Clerk of Court using the ECF system for filing. Based on the records currently on file in this case, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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/s/Lyndon W. Whitmire